

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY.'S DOCKET: BARRE=1

In re Application of:) Confirmation No.: 3901
Luc BARRE)
Appln. No.: 10/541,770) Art Unit: 3751
Filing Date: July 8, 2005) Examiner: Khoa D. Huynh
371(c) Date: 12/24/2003)
For: METHOD AND APPARATUS...)

REPLY TO RESTRICTION REQUIREMENT

Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop: Amendment
Randolph Building, 401 Dulany Street
Alexandria, VA 22314

Sir:

Applicant is in receipt of the restriction requirement Office Action mailed March 18, 2008, and applicant replies below. Claims 1-21 are in the application.

Acknowledgement by the PTO of the receipt of applicant's papers filed under Section 119 is noted.

Restriction, on the basis of alleged lack of unity of invention under PCT Rules 13.1 and 13.2, has been required between what the PTO deems as being two (2) separate and patentably distinct inventions. As applicant must make an

election even though the requirement is traversed, applicant hereby respectfully and provisionally elects Group II, the apparatus, presently comprising claims 8-19 and new claim 21, with traverse and without prejudice.

Applicant respectfully traverses on the basis that the method and apparatus are closely tied together, the apparatus being importantly directed to means for performing the method. The reasoning given in the restriction requirement at the bottom of page 2 is a reason which would apply to U.S. restriction practice, but not to unity of invention practice. Respectfully, lack of unity of invention has not been established or even demonstrated by the PTO.

Moreover, even if U.S. restriction practice were to apply in this case, using the reasoning set forth in the bottom paragraph on page 2 of the Office Action, then the requirement of the second paragraph of MPEP 803 would become effective. No separate classification has been demonstrated, and applicant believes that a complete search of the apparatus would also require a search in the location of classification of the method, if indeed that location is different from the field of search of the elected apparatus.

Considering the parallel structure of the method and apparatus claims, applicant respectfully submits that it would

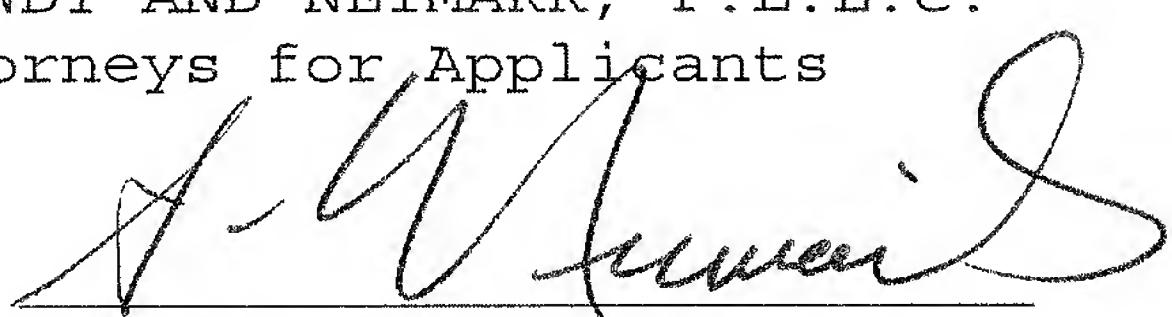
not constitute a "serious burden" to examine both groups together, even if the restriction requirement were proper.

Withdrawal of the requirement and examination on the merits of all 21 claims are respectfully requested.

Respectfully submitted,

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